

LAKE COUNTY BOARD of ADJUSTMENT
March 12, 2014
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Paul Grinde, Steve Rosso, Don Patterson, Frank Mutch (4:12)

STAFF PRESENT: LaDana Hintz, Robert Costa, Lita Fonda

Paul Grinde called the meeting to order at 4:03 pm

Motion made by Don Patterson, and seconded by Paul Grinde, to approve the Feb. 12, 2014 meeting minutes as written. Motion carried, all in favor (Paul Grinde, Steve Rosso, Don Patterson).

FRANKLIN DENSITY VARIANCE (4:04 pm)

LaDana presented the staff report. (See attachments to minutes in the March 2014 meeting file for staff report.)

Steve asked what limited a parcel to a single-family residence. He'd looked in the Density regulations for something that talked about the number of units per parcel. He knew a guest house was included with a main residence and made up a single unit in themselves. This was a full-time residence. The lot was big enough for two on the same lot. Was there something in the regulations that restricted each parcel to a single family or unit? LaDana said it did talk about units, and a unit being a house and a guest house. That was similar to this scenario except he wanted his mother to live there full-time. The way it's been interpreted is that each lot could have a unit. Steve checked this was even though the lot was twice as big as the density limit. LaDana said that was how it had historically been interpreted. Steve checked that it wasn't really written in there. LaDana affirmed. This would potentially be addressed in the regulations update. She noted there were exceptions for units for family members if you exceeded the density, in the 5, 10 and 20 acre density areas. This was 2.5 acre density. That might be discussed in the update, but the updates were separate than what was being looked at here. Similar requests to this one had been granted. The request seemed reasonable.

Jeff Franklin spoke on behalf of his application. His mother was aging and her eyesight was failing. He wanted to be able to monitor her wellbeing. She had asked if he minded if she moved back up after she put his name on the property. He didn't mind at all, but they had to go through this process.

Public comment opened: None offered. *Public comment closed.*

Steve thought that since it was 6 acres (so over 5 acres) with the density limit of 2.5, having 2 residences didn't seem objectionable. Paul commented that the Board had done this several times while he'd been on the Board.

Motion made by Paul Grinde, and seconded by Don Patterson, to approve the variance request with findings of fact and conditions. Motion carried, all in favor.

**FLATHEAD LAKE UNITED METHODISTCAMP CONDITIONAL USE—
UPPER WEST SHORE**

Robert Costa presented the staff report. (See attachments to minutes in the March 2014 meeting file for staff report.) He mentioned that the attachments had gotten printed slightly out of order. He noted that 5 of the public letters received were from neighbors opposed to the development and 2 from former camp staff, which clarified history.

Frank referred to RV licenses issued by the Montana Dept. of Public Health and Human Services in condition #4. Did that mean the license of the vehicle? Robert clarified this was a campground license issued by the state. It had to do with making sure things were up to their specific standards, not specific vehicles.

Steve saw 9 sites in the drawing. Two were permitted. Was there a zoning conformance issued for those two? Robert replied no. Based on the history of the site that they could tell, those two sites were approved by the Dept. of Public Health and Human Services around 2001. The zoning wasn't in effect until 1994. It appeared there were sites on the property prior to that date. Steve asked if all nine sites were in existence before the zoning. Robert said they were not. Some were put in prior to receiving approval. This was not the focus tonight. The applicants came to Planning and said they wanted a total of 6 and that was the review tonight. Steve asked if there was an issue of after-the-fact permitting. Robert said in a sense they were reviewing an after-the-fact proposal but that was not the main concern here. The focus was on the proposal. The other sites that were proposed to be removed would be required to be removed. He estimated that DEQ would require that. Steve said the work that would be done was the removal of sites. Robert said they were looking at a specific proposal for compliance with regulations. [The applicants] were expected to remove the sites that they weren't proposing if this was approved.

Steve asked if there were records on the road easement for the access road. Robert said no. It was a private road shown on surveys. He hadn't found anything about the private agreement between users of that road. It was a private issue.

Frank clarified that these were dry sites although he thought that was clear from the submittal. They had water and electricity but not sewage. Was there a central proposal for an RV dump station? Robert said this was correct. Based on the applicants' materials, it wasn't known yet if there would be a requirement for the dump site. They would have water and electricity. If DEQ required the dump station, they would do that. The applicants could speak to whether they'd heard more on that.

Don referred to concerns about sanitation expressed in letters. Had there been a problem or was this just something they brought up? Robert explained DEQ recently reviewed changes to improve the system. His understanding was they were working towards fixing

some problems. These RV sites need DEQ approval even if approved by the Planning Dept. They would have to address DEQ requirements for this, regardless.

Frank thought that was for cabins and existing structures. Robert said there were a number of connections including the 2 RV sites and the kitchen and dining hall. The 2 existing RV sites had water and electricity. They had to address sewage as well since they were connected to water.

Rick Trembath spoke as a representative of the applicant. There was no sanitation issue. DEQ had been working with the camp on water supply issues. The water testing last year showed some contaminants in the water system. They used bottled water for the campers last year. The water delivery system and the well were in question. There was no problem with the sewer system. They couldn't add to the sewer system because they didn't know what capacity of water they were delivering. There was no metering. They were getting a whole new DEQ-approved water system in the next month or so. DEQ approved the water system for the 9 sites for which they applied. Robert commented he hadn't seen the approval statement. Rick said it was with the engineer's report. The previous use of RVs at the camp went back a long ways. They started out with all camping and gradually phased into cabin facilities for the most part. There had always been RV use. It had mostly been dry camping where you parked in the parking lot for sleeping and used the restrooms and dining hall of the facilities. That was historic use in the camp.

Rick shared a 27-page packet of application materials with the Board (see attachments to minutes in the March 2014 meeting file for handout.) This included the documentation for prior use for more than 2 sites. The 2 sites were the legally permitted amount. LaDana said that Environmental Health recognized 2 RVs on the license. She'd seen engineered plans that showed 3 sites. Environmental Health told her there were 2 when they inspected. She didn't know if the camp people signed off on the permits when the inspection was done, but Environmental Health was saying they agreed to two. It was kind of sticky. That wasn't Planning's realm. She noted Rick had historic documents from their board meetings showing other sites. Environmental Health said there were two, and she wasn't sure how to get them to recognize those. Rick said they wanted to be able to accommodate 6 sites and they were willing to go through the permitting process to do that. Given pictures from numerous years that showed a lot more than two sites, he didn't know how they were continually approved as two.

Rick said they needed the sites. They didn't want to be an RV campground. They weren't public nor did they cater to the public. [The sites] were not for income or lease or selling. They needed them for the volunteers within the Methodist church system, who were local, regional and national. The national organization was called Nomads. They were Methodists who came with RVs and stayed at the camp for few weeks. They had slide-out drawers of tools and they'd do [inaudible] projects for nothing. That was the maintenance of the camp. The camp needed that help. This issue was to accommodate that use. The sites were within the existing parking lot, which was used during the

summer for parking except for the occasional use by the head of a camp who might bring a camper for peace and quiet for a night.

Don asked if the new water system involved a different well. Rick replied it was the same well. They didn't know if the contaminants were from the well or the system. Much had been piecemealed since the 1930's. They were completely redoing the water system, as authorized and permitted by DEQ. The septic system was put in in the early 1990's. It was a good system, collecting all around the cabins. There was a gravity drainfield down below. They had 5 acres of site that could be used for additional drainfield should there be a need. It functioned well.

Steve asked about the access road. It was an issue in the community. Had there been progress made to define that better and to discuss it with the community members and the others who shared the easement with them? Rick thought there were 5 owners on that road. The camp was the primary user. They sporadically fixed the road and potholes, and spot graveled. They dust-oiled it last year as a courtesy to the neighbors. A lot of dust from summer use could happen when it was dry if the road wasn't dust-oiled. No written agreement existed amongst the different owners. Most were absentee and were here for a few months during the summer. They should probably do some sort of shared road maintenance agreement with the neighbors. They had the majority of use so should do the majority of the care and maintenance. Steve thought describing the use in the agreement might make sure the people passed by the traffic were comfortable that the road was being used by people who had permission by the camp to use the road. Some neighbors sounded suspicious about how the road was being used. If the use was described that might solve some problems. He offered it as a suggestion.

Rick thought it was a good suggestion. The road dead-ended at the camp. There should be a purpose for people going on that road. Occasionally they got a big truck to deliver food items. The road was adequate for that. A previous letter brought up the question of whether the road was a county road for maintenance. The county said it was end-of-system, and they didn't want to take over maintenance. This afternoon, Steve noticed a big red and white sign that reminded people to go slow, which was good. Rick said this was one of their signs. They got a lot of young adults going to the camp and they tended to get away faster. The speeding shouldn't be but it was, kind of like living next to a school. The potholes were really good for slowing that down but then you had another problem.

Frank clarified with Rick that they weren't charging for the RV spaces. Were there any charges? There seemed to be an allegation that the camp was making money there. Rick said people came to use the camp. They could stay in a cabin or an RV parked in the parking lot but they paid for the use of the camp if they were going to have meals or if there was a day charge.

Karen Davison, the camp manager described that if a person came and stayed in a cabin and the camp fed them, it was \$45 per person per day. If they stayed in a tent it was \$20 per person per day. She hadn't charged for the RV sites, whether they were coming

during a kid or family camp. She did charge them \$7 per person per meal if the camp fed them, and she did charge them \$5 per day per person for a day use charge. Rick added that these were invited guests, not the general public. If you came down the highway to the camp, that wouldn't be an allowed use. Karen said a person who would like to rent the campground for a group would call. Karen would put out a contract with tons of stuff in it for signing. Rick explained that the purpose of the camp was for kids first. That came from the Board of Trustees. If they could accommodate other groups to be able to use it in the same vein that it was set up for, it was for that kind of compatible use. He listed the Missoula Children's Theater, band camps and things like that. They could provide a facility for that kind of experience.

Don said they requested 6 RV sites instead of two. Did they have more people wanting to come with RV's? Rick said they traditionally had a lot more than 2 come in for the spring and fall. Don checked that they wouldn't have an increase in traffic. Rick didn't think so. When the Nomads came, they came in for 2 weeks and then went back out.

Karen confirmed that Donny came out this year from Environmental Health to do their campground license and kitchen license. At that point in time, he saw 9 RVs. Karen reported to him that with the water situation with the bad sample, they were only permitted to use two. Don said that came from the cease and desist order. Karen said Donny would only permit them for two. She and Donny both signed it. She'd done that before. This would be the 3rd summer. She agreed to that because the cease and desist order said they could have two. There were 9 sitting there.

LaDana had discussed with Environmental Health what was being counted. She had a site plan that an engineer created that showed 3 and historic records showed more. Environmental Health claimed there were two. She had asked about that. Environmental Health responded that just because [the camp] records said that, didn't mean those were counted or there.

Rick thought he could explain that. In the old days, the RV sites were simply parking along a building and using an outdoor outlet and a nearby spigot. That was considered to be one of their sites. The shop was there and was considered an RV site. When the shop went away, a pedestal was put up in addition to the two or three that were there. It just changed through time. Different volunteer work projects probably ended up changing things. It was kind of a gradual use thing. He made the major mistake of putting in the additional four and upgrading the system. He knew they could upgrade and do maintenance on a system. He was ignorant, thinking that as long as they weren't charging for camping and making it commercial, and if it was in-house and not being used for profit, they could distribute that use around the campground parking lot without going through all this. That was his mistake. What they really needed was 6. The 9 was for convenience.

Public comment opened: None offered. Public comment closed.

Frank thought the planned improvements would actually help reduce the impact by getting it under an orderly planning and possibly additional sanitation. He wasn't disregarding concerns of the neighbors. The Board was concerned about the neighbors. The fact was that the camp had been there since 1931. There was precedent in the law that said what was there had an established right. He doubted most of the neighbors had been there since 1931. It was a matter of just getting along. He was in favor of approving it as submitted.

Steve agreed that the project was moving in the right direction by better defining the exact capacity there. The neighbors could also have expectations. He commented the first condition talked about expanding the number of RV sites to allow the addition of 4. He thought they should add clarification given there were 9 on some of the drawings. *He suggested adding the phrase, 'which increases the total number of RV sites to 6'. It could go right after the word 'sites' in the proposed condition #1 on pg. 20 of the staff report.*

Motion made by Steve Rosso, and seconded by Don Patterson, to approve the conditional use request with findings of fact and the conditions and terms including the correction to condition #1 just discussed (for adding the phrase, 'which increases the total number of RV sites to 6' after the word 'sites' in the proposed condition #1 on pg. 20 of the staff report. Motion carried, all in favor.

BARBER CONDITIONAL USE & VARIANCE—UPPER WEST SHORE (4:46)

Robert Costa introduces the owners and agent, Rob Smith, and presented the staff report. (See attachments to minutes in the March 2014 meeting file for staff report.)

Frank checked that the recommendation was to not approve the guest house. Robert affirmed.

Paul asked if they could have a guest house if the lot weren't so steep. Robert said if the lot weren't so steep, with less slope over 25%, that might increase the buildable area. It wasn't clear what that would do and what slopes would need to be reduced for that. Paul said that in a perfect world, they could have a guest house. LaDana added if the lot was bigger that would help too.

In response to a question as to if erosion was the main issues. Robert recalled that last month an extension was done to a conditional use request for slope disturbance. With a conditional use regarding slopes, that was what they were looking to do to make sure there were conditions to address erosion and impacts from the disturbance of the slopes. There were conditions regarding best management practices for that in the conditions. That was one of the main parts.

Steve said the other issue was the impervious surface area was limited to a percentage so the stormwater runoff from that impervious surface could be absorbed by the ground around it. When that ground was steep, that stormwater was more liable to run down the slope than soak into the ground. That was why the steep ground was subtracted from the rest of the lot possibly. Because they did a buildable area that excluded the setback, some

of the setback was adequate to absorb stormwater. If there was a lot of setback property, it was possible there was enough flat ground to absorb the stormwater runoff without including these steep slopes. That had been an issue for him with this. He thought the setbacks could be used somewhat as a fudge factor when they looked at a variance.

Frank's thinking, from an engineering background, was if the goal was to reduce erosion and runoff into the lake, which were commendable goals, were there mitigating structures that could be built like a French drain or filtration system. The system would depend on the soils, perc test, underlying rock structures and how much the owners wanted to spend.

LaDana pointed out other development in this subdivision had been done. The most recent one done wasn't too far from here. It had bedrock. There was nowhere for the stormwater to go. It was a huge issue. It wasn't like they were building a giant house. This was an issue in the area. The other thing that came up was that she didn't know if this Board had approved impervious surface over 49%. They'd only done it a couple of times. In those cases there were extreme situations. In one case the lot had been owned since the 1960's or 1970's, the zoning came into place and the lot was so small that the owner put a modest sized cabin on it, with an approval for something like that. The other was on Finley Point and was re-reviewed by this board for amendments. [The applicants] put a significant amount of concrete on it and then [the board/staff] had to try to mitigate for the additional stormwater. They rebuilt with a modest sized house on that too. It was another one of these small lots.

The issue with small lots was how much did you want to cram on it. The neighbors were told they could only have 29% and many had built within those constraints. Now someone else came in who was already over 50% and wanted to put more there. What did staff tell those neighbors when they came in? Frank thought each lot was a separate case. If they wanted to achieve the goal of mitigating impacts, there could be a way to do it. Was the paved surface considered in that calculation? Robert said it was. Frank asked if they could tear out the pavement and put in gravel. LaDana said she didn't know if the owners wanted to do that. When this project came up, she tried to come up with the best way to resolve this where the landowner got something, even though they were over 50% (which wouldn't necessarily be approved) without totally giving them everything, which wouldn't necessarily be fair to the neighbors and other people in the zoning district. This was written up as a compromise and was included in the history.

Steve thought one reason they were going to leave the gravel was to not increase the impervious surface. The irony was that a gravel surface that was driven upon and impacted didn't absorb much more moisture than pavement. It would still create some runoff. According to the regulations, gravel didn't need to be included even though it was nearly impervious.

[Frank] asked about the letter voicing concerns about getting to upper property. Bob Barber responded that their portion of the property up top had a more gradual slope and would probably be easier for them to enter. There was also an entrance area where they could come off of Osprey Loop. He didn't know what the previous owner and the

current neighbor agreed to. The neighbor seemed to believe they had an easement there but he didn't think he had a record of anything other than perhaps an agreement between the two of them. Frank asked if they'd want to do an easement with the neighbor so they could go through. Bob said they had an easement already to get to the Barber property through the neighbor's property so they were in kind of a weird spot. The place they would put the cabin would block that particular entrance and you'd have to enter from the other side. Someone said the cabin could be moved about 10 feet and it could work.

Rob Smith, agent for the applicant, talked about diagrams including the site plan, cross section, colored topographic site map and turning radius on the driveway. He highlighted various features. For stormwater, he proposed catching it in gutters and putting it into a rock chamber just under the surface. The flattest portion of the property was where the cabin had been staked out. The turning radius on the driveway was really tight.

Steve guessed that they and the neighbors used the same driveway. What was accessed by the upper road? Bob replied it was empty property. He thought they parked their boat trailer up there. Robert said they were storing stuff when he was on the property.

Rob said the Barbers purchased the property with the impression that a guest cabin wasn't a big issue for the property and was part of their vision for it. Bob said the local realtor said there was room to build a cabin and presented plans that had been approved before. The home was a 2 bedroom and they had a child. Everybody liked to visit Montana in the summer. It wasn't going to be enough space.

Steve said if they were to build an addition over the garage, it looked like one big room with lots of flexibility for cots, bunk beds and air mattresses. Patti Jo Barber said they'd envisioned it as a game room. Bob said that having found out they were so far out with the impervious, they'd thought about turning that into a bedroom. Rob said the applicants' vision for the property when they bought it was with the guest cabin. If it wasn't objectionable to the Board, they would really like to get that approval. They understood the neighbors would have to live with the same rules. He introduced John Robinson, the house designer and landscape architect.

Paul asked if the applicant would want to move the guesthouse on the [inaudible] property. Where the guesthouse was could be included in the impervious surface. He confirmed for LaDana that he was talking about creating buildable area. Rob said they worked through some of the mathematics, including a boundary line adjustment. He didn't think they could get below the 49% unless they purchased a lot more of flat property. It was really hard with those narrow steep lots to catch up.

Bob noted they didn't get flooding last week. There was a lot of snow there. Today they looked along the garage doors for water line, since the driveway sloped down to the garage doors. None were noted. It appeared that the drainage system was functioning really well. LaDana asked where the water went. Rob thought it collected in inlets, came out and absorbed in some sort of a gravel system alongside the house. They hadn't been

able to find a white pipe sticking over the lake. LaDana asked if it was known when this was paved. Someone answered no.

John R described drainage with a map. He pointed out drainage away from the lake, where it was relatively flat. This had the least bedrock and had some good soil. He thought infiltration trenches would work pretty well up there. Bob agreed that would be better than trying to put it on the steep part. Frank asked if a guest cabin would require upgrades or modifications to the septic system. Rob explained the Shelter Bay subdivision was [on a system]. LaDana thought they'd just need a change of use.

Frank said he leaned towards being in favor of doing what they could to accommodate owners without ruining the water quality or the environment or something like that, considering the high property values, the amount of taxes paid and the positive economic impact. He knew there was a concern with precedent. He still thought the goal of the mitigation measures could be met if the owners wanted to spend enough money. He wasn't afraid of establishing that type of a precedent. He thought an individual prescription was appropriate. He asked the applicants if they would want to spend enough money to satisfy constraints or conditions that were put on this. He wasn't saying it would be allowed but he thought it was an appropriate question. Bob said they'd have to consider the cost. If it were approved with those conditions, they would certainly be satisfied with that.

LaDana pointed out that the conditions at present were written to support approval of the addition on the garage. They weren't written to support approval of a guest house. If the Board chose to approve that, they would need to write conditions to address that. Robert observed this was in addition to the findings. Frank said the impervious surface didn't change with the pop-up on the house. LaDana agreed. That seemed reasonable to allow. They were over, they'd been over but that didn't make it any more over as long as they kept that within that existing drip line.

Frank asked what kind of conditions would be appropriate to consider. LaDana explained that the planning staff looked for compliance with state law, zoning and how previous things had been permitted. That was what the staff report addressed. What they wrote up was the fairest way to give the applicants something. If the Board wanted to change the way this was written up, the Board could do that but they did have to be aware that they would have to write findings to support that. They might need to change the findings that were in here, and they might need to change the conditions to support their decision.

Public comment opened:

Andy Stark: He'd been in their shoes and didn't envy them.

Public comment closed.

Steve didn't know if there was a practical difference between 54% and 60% as far as the handling of the stormwater. From working on the Upper West Shore zoning district back in the early 1990's, they didn't have some of the same provisions in it for handling stormwater. The idea was that the impervious surface limitations were to handle the stormwater naturally. When he developed his property prior to that, there were no requirements to submit a stormwater plan as long as he had the setbacks and was within the lower number of 29%. He thought this was because it was handled naturally. Now more of a stormwater management plan was required than in those days. He thought the impact of the impervious surface limits were less, but there was a lot of other intrinsic value to that. He liked the looks of trees and natural ground cover and those kinds of things. If they did away with limits on impervious surface, someone could build a house from setback to setback in all four directions. That wouldn't be appropriate for the aesthetic value. Even if someone could engineer a stormwater system to totally mitigate the high percentage of impervious surface, there were still reasons to have green space on these lots. He didn't know what that number would be.

Steve asked Robert about 19.a on pg. 22 and the findings of fact for going over 49%, where it mentioned a variance for impervious surface coverage of 54%. Was there a change required there, other than changing the 54% to 60%? The question would be on 19.g (pg.23), the minimum variance to alleviate the hardship. What needed to be changed? Robert said in 19.a, he thought it would need to be rewritten, except for the first sentence. He and Steve agreed that the same thing would happen with 19.b. Steve noted if they didn't give the 54%, there would definitely be hardship in tearing out pavement or removing roofing/structure. LaDana observed that she often liked to start with the last finding, g. Robert said the findings support it more or less until 19.g when the minimum variance is discussed. Steve thought the question that came up was would a variance request to build a guest house be denied if they weren't already over the 49%. Paul said he'd have a hard time denying that. Frank referred to mitigating the impacts. He agreed there was a certain amount of aesthetic value in having some areas that weren't constructed.

LaDana said another difficult thing, especially when people just bought a property, was if and when this went to court, would the judge ask if they would have bought the lot if they'd done their homework and knew they couldn't put a guest house on it. If the Board of Adjustment didn't approve a guest house, could they still use their lot? What would reasonably allow them to use their lot and still be able to use it in the way they'd hoped. When someone bought a lot, it was hard to say that was part of the hardship, knowing that they'd just bought the lot. Robert said those kinds of questions were specifically what the regulations were asking the Board to review. If they were to approve an additional surface coverage, they would need to qualify it according to the criteria of the regulations. This was what A. through G. on pg. 22 and pg. 23 were. The findings were how staff eventually got to recommendations. They didn't necessarily see a hardship or a lack of reasonable use if they were allowed to just do the addition. He agreed with Frank that there were always mitigating impacts and ability to do that. The regulations asked this to be looked at in a finite way. If the Board wanted to move forward with this, they would have to solidify that with the findings.

LaDana observed that could be hard to do, for instance with item G for the minimum variance that could be granted. Steve thought if they were asking for a guest house where a variance didn't needed to be granted for an existing development that was less than the 49%, the Board would ask if the guest house pushed the limits of size or if it was a small, modest guest house. LaDana noted the regulations did say anything over 49% was prohibited. There was a definition for that. Someone always had the right under state law to ask for a variance. It didn't mean you'd get one for something that was prohibited. She wasn't saying the Board couldn't approve something that was prohibited. If they made findings and conditions to support it, they could make that decision. They had to come up with findings and conditions.

Frank thought the argument was that this was a two-bedroom residence without the extra family room on top and the guest house would be something any owner would want at some time. He thought Steve's argument about approving a guest house was a clear way to look at it. Would it be unreasonable to disapprove a guest house considering it was a two-bedroom house, etcetera? Steve responded that it would be a 3-bedroom house. His question had been if they weren't over the 49% with the addition, so they didn't have to approve a variance for both the addition and the guest house, would they approve a guest house. Frank asked if that was a bedroom upstairs. Steve said it would be at some point, especially if there wasn't a guest house. If it weren't for the slopes on the property, they'd be closer to 30 or 40%. The slopes took out 6000 square feet, per Robert's calculations.

Bob checked that the Board knew the Homeowners Association approved building of the cabin. Frank asked what the homeowners association considered. John R mentioned covenants, a maximum of 770 square feet and bedroom maximum, which related back to the septic system. They got quite a bit of guidance from the homeowners association. Steve checked that except for the access to the neighbor's property, the neighbors thought it was fine to have a guest house. Bob B said he wouldn't go that far. Steve reworded to ask about the board [of the homeowners association] made up of neighbors. Bob said that board took input from their neighbors and ruled they could have the cabin. There were neighbors that expressed concern.

Frank said the mitigating factors were pretty pricy. The driveway area seemed pretty level. He asked about tearing out the pavement to mitigate. John R pointed out some steep slopes. The idea was for infiltration trenches and some kind of collection cup on top. Frank referred to someone's idea to flatten out the steep part. That was another expensive proposal. LaDana said once they started doing that, there were other things for which they might have to come back to the board. Steve said they already had a variance request for disturbing slopes above 25%. If they were going to build the cabin on that steep property, they'd have to have another variance to disturb those slopes. LaDana noted that might change their conditional use. Steve thought they'd found a good site for the guest cabin if the Board allowed it.

The applicants asked if the taped off area had been viewed by the Board. LaDana explained that Robert had been there. The Board wasn't required to visit the site. Robert said pictures of the site were included. Steve said he was familiar with that area.

Paul said he had a hard time turning this down, but on the other hand, he had a really hard time figuring out how to justify it here. Steve reiterated that pgs. 22 and 23 would have to be changed. Frank suggested tabling it so the Board could look at it about a rewrite rather than rewriting on the fly. LaDana didn't know if they could table it because the Board rules only gave a certain number of days to table it. They wouldn't be able to do that with the next meeting time. Steve said they could allow the 54%. The applicants could then come back with another application for another variance for 60% for just the guest house. LaDana explained that the variance was for impervious surface coverage. Essentially they'd be bringing the same thing back. Robert said their position wouldn't change. Steve suggested a hardship was imposed by not allowing them to have a guest house. LaDana thought it might help their cause to show how many other guest houses were up in that subdivision in that area. Frank liked Steve's approach since it gave the Board more time for an important decision. Maybe some soil tests could be done that would help in the decision about exceeding the impermeable surface issue. Maybe there were more mitigating measures to consider than would make this better. There was also the option that the owners might decide this was too expensive. Looking at other guest houses in the area could be of real validity. These were fluid issues. The technology has improved and the concern for these issues had changed since it first started.

Steve thought as time went on, they had to evaluate what the importance of the percentage of impervious surface was and why they had a limit on it. Before they required stormwater management plans, there was a reason. Now that the plans were required and there were many ways to handle stormwater, the idea of having open bare ground to handle stormwater might not be as important.

Motion made by Paul Grinde, and seconded by Steve Rosso, to approve the variance to allow impervious surface up to 54% and conditional use for disturbing slopes to enlarge the driveway per the staff recommendation along with recommended conditions and findings of fact. Frank asked if the owners came back and asked for 60%, would these findings of facts automatically throw that consideration out the window. LaDana thought the applicants would have more information to support why they should have the guest house when they came back. They would look at that.
Motion carried, all in favor.

MIHARA VARIANCE—CITY-COUNTY (5:40 pm)

Robert Costa introduced Andy Stark, agent for the applicants, and presented the staff report. One public comment was handed out to the Board. (See attachments to minutes in the March 2014 meeting file for staff report and for handout.)

Steve checked that a single-family residence was allowed to have an accessory apartment under the Polson Development Code and the variance was required because this was detached. The variance wouldn't be needed if the apartment was in the basement.

Robert confirmed. LaDana mentioned that a code update was in process. In the meantime, these were the regulations. She knew of two instances where some kind of accessory structure had been allowed to have some sort of living quarters. It was based on what existed in the structure already. This was a new structure but was a similar situation in that there was a septic permit that got signed off that maybe shouldn't have. What was the most reasonable thing to allow them to use this system on which they spent money in 1999?

Frank asked about the 30 day limit on occupancy. Robert replied that the Polson Development Code had a definition for guest house that hadn't been adopted by the County. The limit of 30 days was what the rest of the regulations tended to allow for. LaDana said that was a standard in other zoning districts. If neighbors said someone was living in the guest house full-time, at least this gave the Planning Dept. something to go by. The deed restriction was something that was typically required so someone wasn't living there full time. The other thing that came into play was if a guest house was rented out, it brought up other state law requirements and other things to look at that the staff weren't looking at right now. Frank was interested in discussing why this was a restriction although that was beyond the scope of this permit. It seemed to him that the 30-day occupancy of a building weren't different from occupying it year-round. What if you changed guests? LaDana said this was so someone wasn't living in the guesthouse full time. She repeated that [scenario] brought up other regulations that they weren't looking at under this circumstance. Steve thought the question was whether there should be zoning that was specific to single-family per lot versus multiple-family zoning. This was an issue where you had single-family zoning, with one family living on each lot. They were going to allow two families to live on this lot—they needed to draw the line somewhere because this was zoned single-family, so to speak. Frank said in other rules, a unit was defined as a house plus a guest house. Steve pointed out the guest house had a 30-day limit. A house and a guest house were different than a duplex.

Robert pointed to #8 (pg. 12). There was a DEQ (Department of Environmental Quality) approval on the property that required the guest house to be dependent. That was one thing to keep in mind as well. Those specific requirements included what the living area was to contain, and limits on kitchens and laundry facilities. They were trying to keep this in line with the rules out there.

Frank referred to attachment 3, which showed an RV hookup, a second site and a drainfield for 2 houses plus a mobile home. If that were part of the original permitting process for the sanitary system, they'd have plenty of capacity. LaDana reiterated that this had a DEQ approval that restricted it to the use. The use was single-family residential with this dependent guest house. Otherwise they'd have to do a rewrite. It did say mobile home but with the RV there, they might have been referring to an RV hookup and wrote it incorrectly. She didn't know on that. The applicants seemed to be asking for what was approved under this septic permit.

Andy Stark spoke for the applicant. He asked for clarification of 'dependent' in the DEQ usage. LaDana explained it meant you couldn't have a laundry or a kitchen. You could

have the minimal courtesy hotel kind of kitchen things in there. It was minimal facilities. Steve said the idea was if the main house wasn't there, the guest house wouldn't be livable because you needed to go over to the main house to do laundry and to cook big meals. The guest house was dependent on the main house. Andy asked if all guest houses were defined that way. The planners answered no. Robert said this was an Environmental Health sanitation requirement. LaDana said it had a DEQ approval and that was the way the State had this written up, as a single-family residential use. They had to have a dependent guest house to make it fit with that. They could do a rewrite to get that changed, but that was an Environmental Health process they'd have to go through. Steve said if it was independent, there'd be a probability of more gray water. The septic field was allowed to be downsized a little bit if the guest house was indeed dependent.

Andy asked if significant changes were expected for the regulations affecting this property, since the regulations were in that process. LaDana said that hopefully when the regulations were updated, they would be allowed to permit guest houses, at least in the county area because the parcels in those areas were larger than your typical city lots. They could handle a house and a guest house. They were trying to accommodate that in the regulation update. Andy asked if it would be a County or a City thing. LaDana explained it was a joint administration of the regulations. Both City and County went through the same process and adopted the same regulations. The County staff administered the area that didn't fall in the City. The City and County shared the City County Planning Board.

Frank asked on condition #4 (3) on pg. 16. Did that mean if the rules changed, the governing authority could revoke this? Robert said this essentially allowed some flexibility for changes if something in the rules changed that would affect the deed restriction and make it not applicable. If it was changed it would have to go back to the Board. That was in the conditions. LaDana gave examples. Maybe the next owner of the lot wouldn't want two guest houses, or might have to a parent who had to live there full time. They wanted to be able to change that deed restriction so it wasn't locked in to say it always had to be that. Frank described a situation where the standard was revoked and someone would say they had to tear the guest house down. The planners said no, that wasn't it. Further discussion ensued. Steve said this was a deed restriction, which restricted what they could do with their property. If it was revoked, then the restrictions were removed, and it became less limiting to the property owner rather than more limiting. Frank said that helped him.

Andy asked when this property was zoned as single-family. LaDana replied 1993. Currently the Planning office took a look at the septic permits to make sure they complied with zoning. Andy said back in 1998 and 1999 apparently they didn't make the connection. LaDana said this was the best option to give them, something that they obviously paid for previously. Andy said that was the thing that irritated Tom a bit was that what he understood he was getting in 1999 suddenly got revoked. LaDana said that happened to a lot of people. They didn't build when they intended. When they did finally come to build, they had to comply with whatever zoning was in place. Potentially,

it did create a hardship. Andy said that zoning was in place at the time. LaDana agreed. Andy thought [Tom] was paying for the County's error. LaDana said yes and no. Nobody from the Planning Dept. had signed off on it. She didn't know what the process was then. They might have depended on the landowner to check with the Planning office to see if they complied with the zoning. Andy understood that they didn't know what happened; Tom wasn't going to push the issue.

(Public comment: No public present to comment.)

Motion made by Frank Mutch to approve the variance with staff recommendations and findings of facts.

Steve asked Andy about the drawing of the guest house. There was a bathroom for the shop and garage and one upstairs. Steve and Andy both presumed there'd be at least a shower, although Andy wasn't sure. Steve asked if there would be a kitchenette. Andy said it wasn't defined that far. It was clear it wouldn't be a full-blown kitchen. Steve thought it sounded like mostly sleeping, and mostly family. Andy mentioned you didn't want to make your guests too comfortable or they wouldn't go away. The plans were still somewhat fluid. LaDana said when the initial plans came, she could see there was originally some kind of living quarters anticipated when they did the 1999 septic. Staff approached Andy to see what the owners really wanted to do, so they could get it permitted for what they really wanted. It was kind of a work in process. Steve checked that those ideas would be flushed out before the zoning conformance. LaDana said that would happen with Environmental Health. It was more important for Environmental Health to have the floor plans than Planning. Planning would ultimately see them before signing off.

Steve pointed out a correction on condition #2 on pg. 16 in the first line, where 'the be plans' was corrected to 'the plans'.

Motion with the above correction seconded by Steve Rosso. Motion carried, all in favor.

OTHER BUSINESS (6:06 pm)

Frank said the staff did a tremendous job on getting information. He thought the recommendations were very reasonable. He commended the Planners for that.

One item was known for next month at this point.

Andy thanked the Board for their public service and thanked the Planners for their hard work.

Paul Grinde, chair, adjourned the meeting at 6:07 pm.